

CHAPTER 3. ADVISORY COMMITTEES

30. PROPER USE. Under appropriate circumstances the use of advisory committees by Federal agencies to provide information, advice, and recommendations is considered beneficial to the operation of the Government. The Federal Advisory Committee Act, P.L. 92-463, as amended; 5 U.S.C. App. 2; and Title 41 of the Code of Federal Regulations (CFR) Part 101-6, Federal Advisory Committee Management, prescribe standards for departments and agencies to follow in establishing and using advisory committees. Title 49 of the CFR, Part 95, implements the Act and the GSA Regulation within DOT. Appendix 1 of this order contains a copy of the Act.

31. STATUTORY DEFINITION. The Federal Advisory Committee Act defines an advisory committee as "any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established by statute or reorganization plan; or established or utilized by the President; or established or utilized by one or more agencies in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government and not composed wholly of full-time officers or employees of the Federal Government."

a. Any independent group (task force, study group, panel, or similar group) which issues reports in its own name, has members not common to an existing committee, and has non-Federal members is an advisory committee.

b. Any group existing outside the Federal Government and not established by a Federal Government entity but which is used by Federal entity as a preferred source of advice and which is closely tied to the Federal entity through such management controls as funding, setting agendas, or selection of members is an advisory committee.

32. STATUTORY EXEMPTION FROM THE FEDERAL ADVISORY COMMITTEE ACT.

a. Section 204(b) of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4) provides that the Federal Advisory Committee shall not apply to certain meetings between State, local, tribal, and Federal Officers. The Act provides that FACA "shall not apply to actions in support of intergovernmental communications where:

(1) Meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) Such meetings are solely for the purpose of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration."

b. Office of Management and Budget Memorandum 95-20, Guidelines and Instructions for Implementing Section 204, contains procedures on consulting with State, local, and tribal governments.

33. FEDERAL ADVISORY COMMITTEE ACT EXEMPTION AND THE LOBBYING

DISCLOSURE ACT. Under section 230 of the Federal Aviation Reauthorization Act of 1996, P.L. 104-264, codified at 49 U.S.C. Section 106(p)(5), the Administrator may designate certain rulemaking committees as exempt from FACA. The Lobbying Disclosure Act of 1996 (LDA), P.L. 104-65, may apply to members of rulemaking committees that are exempt from FACA. The sponsor of the committee or the designated Federal official should notify prospective members of a FACA-exempt committee that the LDA may apply to them.

34. LABOR-MANAGEMENT PARTNERSHIPS. Executive Order 12871, Labor-Management Partnerships, directed that a National Partnership Council be established. The Executive order requires each agency to create a labor-management partnership by forming a labor-management committee. The FAA committee serves as a forum for union and management issues and the membership includes union members. If any one of the union representatives is not a Federal employee, the FAA committee must be chartered as an Federal advisory committee as prescribed in this chapter.

35. DEPARTMENTAL POLICY.

a. An advisory committee shall not be established or utilized by FAA unless authorized by statute, Executive order, Presidential direction, or Secretarial action.

b. An advisory committee shall not be considered formally established until all of the following have been completed:

(1) A draft charter has been submitted to the Secretary for approval. The charter will be prepared as an FAA order.

(2) It has been determined in writing by the Secretary that such a committee is necessary and in the public interest, except in the cases where a committee is directed by statute or established by Executive order.

(3) The General Services Administration and the Office of Management and Budget have been consulted, except in cases where a committee is directed by statute or established by Executive order.

(4) The notice of establishment has been published in the Federal Register, except where a committee is directed by statute or established by Executive order.

(5) The DOT Committee Management Officer has filed the charter with appropriate Congressional Committees and the Library of Congress.

c. If it is desirable to establish an advisory committee by legislation, Executive order, or Presidential direction, it must be done by the establishing authority on recommendation of the Secretary who will transmit a recommendation to the appropriate officials. Any modification to the committee will follow the same procedure.

36. ESTABLISHING PROCEDURES. Office of Management and Budget Circular No. A-135, Management of Federal Advisory Committees, requires each Federal agency to maintain a planning and review process when proposing a new Federal advisory committee.

a. The sponsoring office shall:

- (1) Request establishment of an advisory committee only after determining that:
 - (a) It is essential to the conduct of agency business and there is a compelling need for the new committee.
 - (b) It is in the public interest.
 - (c) It is the most effective, expeditious, and economical means of accomplishing the objective.
 - (d) The objective could not be accomplished by an existing entity within the Department, or an existing committee, hiring an employee or consultant, or awarding a study contract.
- (2) Prepare a proposed FAA order containing the charter of the committee. The office will formally coordinate the proposed order with the Office of Financial Services (ABA), AGC, and ABC, among other offices. The documentation will be forwarded for the signature of the Administrator covering the establishment, modification, or extension of the committee.
- (3) Prepare an action memorandum of justification for the signature of the Administrator addressed to the Secretary, which transmits the charter (FAA order) and contains:
 - (a) A statement that there is a compelling need for the committee and it is in the public interest.
 - (b) An explanation as to why the functions cannot be performed by FAA, by another element of DOT, or by an existing committee.
 - (c) The plan to attain balanced membership.

NOTE: The Act requires the membership of an advisory committee to be "fairly balanced in terms of points of view represented and the functions to be performed." 41 CFR Part 101-6 recommends that agencies consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee. Committees requiring technical expertise shall include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.

- (d) Other information which the sponsor and the Administrator wish to convey to the Secretary concerning the committee.
- (e) Request for approval.

(f) Action line. See Appendix 2, Sample Memorandum of Justification, which contains a sample memorandum for chartering a committee.

(4) Prepare a memorandum for the signature of the Administrator addressed to the Secretary requesting membership approval for making the appointments, including a list of proposed members and a brief biographical resume for each proposed non-Government member, as outlined in paragraph 37. This information should be forwarded along with the proposed charter, if available at that time. Replacements for non-Government committee members must also be approved by the Secretary.

(5) Coordinate the proposed order and supporting papers with other interested offices and services (always include AGC, ABA, and ABC).

(6) Send the coordinated order and supporting papers to ABC-100 for committee management clearance, coordination with the associate administrators, and submission to the Secretary for approval through the Administrator.

(7) Receive Secretarial approval of the committee and members of the committee.

(8) Forward the order to the Administrator for signature.

(9) Extend invitations to prospective members.

b. The Administrator will sign an action memorandum of justification and an action memorandum requesting membership approval addressed to the Secretary, including biographical resumes for each proposed individual non-Government member. The documentation will include the proposed committee charter and a completed GSA Form T-823-H, Consultation on Federal Advisory Committees. Appendix 3, Sample Consultation Form, contains an example of the completed form.

c. The DOT Committee Management Officer will:

(1) Coordinate the draft charter, membership list, and justification memorandum. The Office of the General Counsel reviews the applicability of ethics statutes or regulations.

(2) Forward to the Secretary:

(a) The draft charter, membership list and FAA justification memorandum with the record of coordination, and the DOT Committee Management Officer's evaluation and recommendations.

(b) The FAA justification memorandum.

(c) A consultation letter to OMB, if required, for the Secretary's signature.

(3) Forward the draft charter, and if required, the signed consultation letter and GSA form T-823-H to GSA and OMB. In the event the Secretary does not approve the draft charter, or if corrections need to be made as a result of coordination, the DOT Committee Management Officer shall return the draft to FAA for revision and resubmission.

(4) Notify the Administrator and sponsor, through the FAA Committee Management Officer, that notice of establishment may be published in the Federal Register after receiving notification from GSA when consultation has been completed. A notice in the Federal Register is required when an advisory committee is established, utilized, reestablished, or renewed except a committee directed by statute or established by Executive order. Appendix 4, Sample Notice of Establishment of an Advisory Committee for Publication in the Federal Register, contains a sample notice.

(5) File the charter with the appropriate Congressional committees and the Library of Congress 15 days following publication of notice of establishment. The DOT Committee Management Officer will furnish to GSA and to FAA a copy of the letter which files the charter, as well as a copy of the charter with the filing date (effective date) entered.

d. The effective date of the charter shall be the date the charter is filed with the appropriate Congressional committees and the Library of Congress.

37. CATEGORIES OF MEMBERSHIP. Each appointed member shall be designated as a representative of a particular interest or party, a Special Government Employee (SGE), or a Federal Government employee.

a. Representative. A candidate must represent a particular interest or party other than the U.S. Government and must be qualified to represent that interest by virtue of his or her employment, education, experience, or affiliation with a specific group, industry, or organization. Committee members who are appointed to represent the public will be appointed as SGE's. If a committee charter specifies that member organizations shall name their own representatives, those persons shall be considered in the representative category.

b. Special Government Employee. A candidate appointed for his individual views or advice must be appointed as an SGE. The committee sponsor shall ensure that each candidate shall be advised of his or her status as an SGE and that he or she is subject to the Federal conflict of interest laws, agency standard of conduct regulations, and financial disclosure requirements applicable to executive branch officials.

(1) The sponsoring office shall comply with all Federal requirements for appointing SGE's. All such nominations shall be reviewed by the Designated Agency Ethics Official (DAEO) or the Office of the Chief Counsel (AGC).

(2) After reviewing the required SGE financial disclosure report and consulting with the DAEO or AGC, the employing official may waive the the restrictions of Section 20, Title 18, U.S.C. by certifying in writing that the need for the individual's services outweighs the potential for conflict of interest. See the Ethics Reform Act of 1989, 19 U.S.C. 208, for additional guidance.

38. APPROVAL OF ADVISORY COMMITTEE MEMBERS. The Secretary appoints all advisory committee members unless otherwise specified in the committee charter. Nominations of advisory committee members should be forwarded to the DOT Committee Management Officer 3 months prior to the desired appointment date. The list of proposed members shall be accompanied by:

a. A memorandum requesting the Secretary's approval and describing the procedures used to select the nominees. One copy of Form DOT F 1120.1, Advisory Committee Candidate Biographical Information Request, shall be submitted for each nominee describing his/her qualifications. This form is available upon request from ABC-100.

b. An appointment letter for each committee member. The letter will be signed by the Secretary. Each letter will state:

(1) The particular interest or party the individual represents and the individual's qualifications to be a member.

(2) That the individual is being appointed as a Special Government Employee and is subject to Federal conflict of interest laws, FAA standard of conduct regulations, and financial disclosure requirements.

c. An accompanying memorandum which identifies each person's expertise and whether that person is a reappointment or a new appointment and the name of the member being replaced.

d. A notation in the memorandum that all financial disclosure forms for SGE's have been received and reviewed by the DAEO and AGC (see paragraph 37). This requirement applies to each reappointment.

e. Any waiver issued by the employee official for an SGE.

f. Any letter of recommendation from a Member of Congress, a copy of any interim response to such a letter, and a final response to be signed by the Secretary notifying the Member of the candidate's appointment.

39. CHARTER RENEWAL. A charter to renew an advisory committee shall be processed in the same manner as a charter for establishment except that the renewal process draft charter for renewal shall be forwarded to the DOT Committee Management Officer 60 days prior to the expiration date. There need not be a 15-day waiting period following publication of the notice of renewal in the Federal Register, if there is no lapse between charters. The notice may be published concurrently with the filing of the charter. To assure meeting the requirement that the renewal be forwarded 60 days prior to expiration, the FAA renewal process shall begin no later than 6 months prior to expiration.

40. REESTABLISHMENT. If a charter expires before a new charter is filed, the committee must be re-established. The same procedure is followed as for establishment, including the 15-day waiting period following the publication of Notice of Reestablishment in the Federal Register.

41. TERMINATION AND DURATION. Executive Order 12838, Termination and Limitation of Federal Advisory Committees, requires each Federal agency to terminate Federal advisory committees which are no longer needed.

a. An advisory committee shall be terminated as soon as it has completed its assigned task. When the sponsor and the Administrator have determined that an advisory committee is no longer serving the purpose for which it was established, a recommendation for termination shall be made to the Secretary for approval. If approved, notice of termination shall be made to the members and others having an interest in the committee and the DOT Committee Management Officer shall notify GSA. A notice of termination can be published in the Federal Register. The directive that established the committee shall be canceled. The responsibility for initiating these actions rests with the sponsoring element. These procedures shall be followed for committees being terminated prior to the expiration of their charters, as well as for those which will not be renewed at expiration time.

b. An advisory committee whose duration has not been fixed by law or other predetermination shall terminate 2 years from the date of filing unless the Secretary determines in writing prior to the end of the 2-year period that renewal is in the public interest. As long as the committee fulfills a compelling need and its charter is renewed at the end of each 2-year period, it may be referred to as a "continuing" committee.

c. Even though an advisory committee has a predetermined termination date, the charter must be renewed at the end of each 2-year period if the predetermined duration extends beyond a 2-year period.

42. DOCUMENTATION. The establishing document (charter) for an advisory committee shall be issued as an order. In addition to the standard paragraphs, the charter shall contain the following:

- a. **Official Designation.** Paragraph 25 contains the requirements when naming a committee.
- b. **Objectives.**
- c. **Scope of Activities.**
- d. **Duties, Organization, and Administration.**
- d. **Official to Whom the Committee Reports.**
- f. **Sponsor and Office Providing Support Services.** The estimated cost of the committee must include any planned contractual support.
- g. **Estimated Number and Frequency of Meetings.**
- h. **Composition of Committee.** Include the number of members, the length of terms, and the plan to achieve balance; i.e., groups to be represented, geographical, or other balance factors.
- i. **Officers.** Indicate the method of choosing the chairperson, officers, and length of terms.
- j. **Estimated Annual Cost to the Government to Fund, Support, and Maintain the Committee in Dollars and Staff-years.** Dollar costs include compensation, travel, and per diem for non-Federal members, staff salaries, consultant fees, contractual support, printing, supplies, and cost of commercially rented space. Staff-years include the time spent by staff members on committee work.
- k. **Subcommittees.** The chairperson may establish subcommittees with the approval of the sponsor. It is recommended that all subcommittee members be members of the parent committee. If that is not feasible, at least some members, including the chairperson, must be members of the parent committee. Subcommittees of a continuing nature must be listed in the charter and updated at renewal time. Subcommittee reports shall be submitted to the full committee for review and approval. If a subcommittee reports directly to a Federal official or otherwise acts independently of the parent committee, it must be separately chartered. Subcommittee meetings shall comply with the provisions of paragraph 45.
- l. **Public Participation.** Include the extent to which each committee meeting is to be open to the public.
- m. **Availability of Records.** Specify location, availability, and fee charges for documents and reports to be made available to the public.

n. Public Interest. The following statement is required: "The continued use and existence of the advisory committee is determined to be in the public interest in connection with the performance of duties imposed on FAA by law."

o. Effective Date and Duration. If there is a predetermined termination date or period of time for the life of the committee, it should be stated. If not, it may be described as a "continuing" committee. For a statutory committee, such description shall include a citation to the establishing law. The effective date of the establishment of the committee charter is also the filing date of the charter. The Act also requires that each advisory committee be terminated unless its charter is renewed within a 2-year period following the effective date.

43. MODIFICATION OF CHARTER.

a. When it is necessary to modify an existing charter, the procedure shall follow the one used to establish a charter. Slight modifications may be made by amendment to the existing charter in consultation with ABC. Extensive or substantive changes require a new charter.

b. Charters for committees established by legislation, Executive order, or Presidential direction may be modified by the procedures outlined in paragraph 41a except for those items specified in the legislation, Executive order, or Presidential direction. If it is desirable to modify or replace such items, it must be done by the establishing authority on recommendation of the Secretary.

44. COMPENSATION. Membership on FAA- or DOT- sponsored advisory committees is considered a public service. Public policy and technological matters which are the typical concerns of FAA committees usually require members whose personal accomplishments place them in a position to donate their time and service. If it is felt necessary to provide payment, it will be considered an honorarium. Any compensation, travel, or per diem allowances should be included in the committee charter.

45. MEETINGS.

a. Calling of Meetings. Advisory committee or subcommittee meetings may be held only with the approval of the committee sponsor and at the call of the DFO who has formulated or approved the agenda.

(1) In addition to a list of items to be considered at the meeting, the agenda shall indicate if any part of the meeting will be closed in accordance with subsection (c) of 522b of Title 5, United States Code. Except as directed by the Secretary, the committee sponsor shall approve the holding of open meetings. Appendix 5, Sample Notice of Proposed Meeting of an Advisory Committee for Publication in the Federal Register, contains a sample notice.

(2) To limit costs, advisory committee meetings shall be held in a Federal building in Washington, D.C. When it is more cost effective or convenient to hold a meeting elsewhere, or if a site visit is planned, a written request must be submitted to the DOT Committee Management Officer. A regional or center advisory committee would hold meetings in the regional headquarters or in a building at the center.

(3) To curtail costs, a videoconference or teleconference should be considered.

b. Approval Required to Hold Closed or Partially Closed Meetings. The request for approval to hold a closed meeting or a partially closed meeting shall be made in writing to the Secretary at least 30 days prior to the meeting date and shall include reasons for requesting a partially or completely closed meeting. The determination by the Secretary shall be in writing and shall be made available to the public on request.

c. Reporting of Closed or Partially Closed Meetings. An advisory committee which has held closed or partially closed meetings shall issue a report annually summarizing its activities which are informative to the public consistent with the policies of 552b of Title 5 U.S.C. Notice of availability of this report shall be published in the Federal Register not later than 60 days after its completion. The notice shall contain information as to its availability to the public.

d. Designated Federal Official. Each meeting shall be chaired by, or conducted in the presence of, a full-time salaried officer or employee of the Department who shall have authority to adjourn a meeting. This official shall be required to do so whenever he/she considers it to be in the public interest, and shall be delegated such responsibilities in writing. If the chairperson is a Government employee, he/she will function as the designated Federal official. If the chairperson is not a Government employee, the executive director of the committee will function as the designated Federal official. If for some reason the executive director of the committee is not available, the sponsor may delegate that responsibility to another Federal employee.

e. Publication of Notice of Meetings in the Federal Register. Timely notice of each advisory committee meeting, whether open or closed to the public, shall be published in the Federal Register.

(1) The notice shall contain the name of the committee; the time, place, and purpose of the meeting; a summary agenda, if appropriate; and a statement as to whether the meeting is to be open, closed, or partially closed.

(2) The notice shall be published by the sponsor at least 15 days prior to the meeting date. Violation could result in cancellation of the meeting by order of the DOT Committee Management Officer. Shorter notice may be given in exceptional circumstances, which must be explained in the notice.

f. Arrangements for Meetings. The sponsor shall ensure that meetings are held at a reasonable time and place, that the size of the meeting room and the resources and facilities are sufficient to accommodate those who could reasonably be expected to attend, that any member of the public shall be permitted to file a written statement, and that interested persons may be permitted to speak at the meeting in accordance with procedures established by the committee. In some cases, it may be desirable to hire an interpreter for the hearing impaired.

g. Minutes. The DFO shall ensure that detailed minutes are kept for each advisory committee meeting. The minutes shall include: time and place of the meeting; a list of all attendees, including members, staff, and public observers; a summary of matters discussed and conclusions reached; copies of reports received, issued, or approved by the committee; and a description of public participation, including oral or written statements. The chairperson of the advisory committee shall certify the accuracy of the minutes.

46. PROHIBITED DATA. Unless prior concurrence is given by the DOT General Counsel, advisory committees shall not receive, compile, or discuss data or reports concerning matters which would be covered by exemptions four or six of the Freedom of Information Act, 5 U.S.C. 552(b)(4) or (6), which deal with matters that are trade secrets and commercial or financial information or records, the release of which would constitute an unwarranted invasion of personal privacy. Further, no personal information shall be received, compiled, or discussed unless done so in compliance with the Privacy Act, 49 U.S.C. 552(a), and the Department's regulations found in 49 C.F.R., Part 10.

47. ANTITRUST LAWS. The activities of advisory committees are subject to the antitrust laws, and committee members are subject to those laws. Industry representatives and Government personnel officially connected with advisory committees should be made aware of the application of the antitrust laws by the sponsor. Should any specific question arise concerning any particular plan or course of action, the question should be referred to the Office of the Chief Counsel.

48. ADVISORY COMMITTEE REPORT.

a. Annual Report on Federal Advisory Committees. FAA must submit this report on the meetings, activities, and membership of each advisory committee to the DOT Committee Management Officer, S-10, each year. Sponsoring offices and services shall submit their annual reports to the FAA Committee Management Officer, ABC-1. Reporting forms and instructions will be distributed by ABC-100 approximately 1 month prior to the due date.

b. Report on Closed Meetings. Paragraph 41c discusses the annual reporting of any closed or partially closed meetings as required by the Act and consistent with the policies of 5 U.S.C. 552(b).

c. Filing of Committee Reports with the Library of Congress. Section 13 of the Act requires that each advisory committee shall file with the Library of Congress at least eight copies of each report and, where appropriate, background papers prepared by consultants. A copy of each report shall be sent to the FAA Committee Management Officer, ABC-1, and the DOT Committee Management Officer, S-10.

49. RESERVED.